

20 June 2019

Mr Mike D'Argaville
Legal Counsel
Australian Financial Complaints Authority Limited
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Email: submissions@afca.org.au

Dear Mr D'Argaville

Proposal to identify financial firms in published determinations

The Customer Owned Banking Association (COBA) appreciates the opportunity to provide a submission to AFCA on its proposed changes to its Rules that would allow AFCA to identify financial firms in published determinations.

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has \$119 billion in assets, 10 per cent of the household deposits market and 4 million customers. Customer owned banking institutions account for around three quarters of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

COBA notes that AFCA is presently required to publish determinations in a form that does not identify any of the parties. We understand from the consultation paper that the proposed changes would enable AFCA to identify the financial firm but no other parties.

COBA understands that AFCA's proposed changes would apply to determinations issued after the changes take effect, whether the complaint was received before, on or after that date, subject to the changes being approved by ASIC.

COBA is concerned about AFCA's proposal for a number of reasons. Firstly, the rationale for AFCA's proposal and associated benefits are not clearly articulated. The consultation paper states that "AFCA is committed to being open, transparent and accountable to the public. As part of this, AFCA proposes among other transparency measures to identify financial firms in our published decisions"¹.

While COBA recognises that AFCA, as part of its authorisation conditions, is required to be open, transparent and accountable to the public, it is not clear how identifying financial firms in published determinations would provide benefits and help, for example, support AFCA's accountability to its key primary stakeholders (AFCA members and their customers).

Further to this point, AFCA's consultation paper does not explore the rationale underpinning the current and established requirement of not identifying any of the parties to a determination.

We note that there is no evidence or debate in AFCA's consultation paper about how the current requirement is no longer relevant or failing, and as such we do not see any compelling reason to change, which would in fact have negative implications.

¹ AFCA Consultation Paper, 31 May 2019. Page 1 of 3.

COBA notes from AFCA's consultation paper that there are a range of other industry ombudsman schemes already doing this, including AFCA's UK equivalent, the Financial Ombudsman Service (UK), and schemes such as the Energy and Water Ombudsman Queensland.

While we appreciate the international and domestic examples provided, it is difficult to see how two jurisdictions that have taken similar approaches is clear evidence supporting AFCA's proposal. It would be more meaningful for AFCA to provide a broader range of financial services ombudsman examples and/or a considered examination of the impact that any identified similar approach is having in practice (i.e. a careful examination of the consumer impact and business impact).

COBA also notes that there is no debate in AFCA's consultation paper about the potentially adverse consequences of its proposal and how this is outweighed by the potential benefits (the latter of which is also not clearly articulated by AFCA, as discussed above).

The nature of decision-making in the EDR framework, both under the previous scheme arrangements and now under AFCA is, appropriately, designed to deliver fair outcomes for consumers with a process that "aims for a minimum of formality"². However, the emphasis on "fairness" creates a potential risk of subjectivity in decision making and a lack of rigour in determinations. The emphasis on fairness, coupled with the future possibility of being publicly named in a published determination increases the risks associated with challenging a complainant through the EDR process.

On balance, we are concerned that this may operate to create a significant disincentive for financial firms to test and resolve issues through the EDR process. While COBA recognises that AFCA is impartial and independent and does not act for any party to advocate their position, the inadvertent creation of any disincentive for consumers or financial firms would not be consistent with AFCA's role.

The creation of any disincentive for firms to go to EDR could also put upward pressure on costs for providers, which are ultimately borne to some degree by all customers.

While COBA anticipates that EDR costs will increase over time, we are strongly of the view that AFCA must operate to also ensure that the cost of EDR for financial firms is appropriately minimised. Higher EDR costs are more easily absorbed by large financial institutions. For smaller institutions, such as customer owned banking institutions, higher costs may operate as an operational burden that diverts limited resources that could otherwise be focussed on further product and service innovation to the benefit of consumers and boosting competition in the market.

COBA is also concerned about the risk that identification may result in commercial information on a firm's internal policies, procedures or pricing, for example, being disclosed to the market. As this may have a detrimental impact on a firm, we would appreciate information from AFCA on how this would be managed.

COBA is a strong supporter of evidence-based policy making. In this respect, COBA urges AFCA carefully consider the potential costs and benefits of its proposal and to clearly articulate its examination of this to all stakeholders before proceeding any further.

If you have any questions or comments in relation to any aspect of our submission, please contact Tommy Kiang, Senior Policy Manager, on [REDACTED]

Yours sincerely



MICHAEL LAWRENCE
Chief Executive Officer

² AFCA webpage on '[Accessibility](#)'.